IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No. 1262 of 2007

Judgment reserved on: 17.12.2007

Date of Decision: December 26, 2007

Bheem Sukh Chauhan … Petitioner

Versus

State of H.P.& ors. … Respondents.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. Justice V.K.Ahuja, Judge.

Whether approved for reporting?

For the Petitioner : Mr. R.K.Negi, Advocate.

For the Respondent(s) : Mr. M.S.Chandel, Advocate General with Mr. R.M.Bisht, Dy. Advocate General for respondents 1 to 3.
Mr. B.C.Negi, Advocate, for respondents No. 4 & 5.

Deepak Gupta, J

The petitioner by means of this writ petition has challenged the selection of respondent No.5 as Post Graduate Teacher (PGT) Biology, in Government Senior Secondary School, Deogi on PTA basis. One of the main grounds of challenge taken in the writ is that the respondent No.5 who has been selected is related to Shri Bhagat Ram Thakur, President of the P.T.A and is also related to

the Subject Expert and therefore, her selection is illegal and liable to be set aside.

In reply to the allegations, the respondent No.5 had filed a vague affidavit in which it was stated that the Subject Expert is distantly related to her. Thereafter, this Court had passed the following orders on 28.11.2007, which reads as under:-

> "One of the allegations made in the petition is that respondent No.5 is the niece of Shri Bhagat Ram Thakur, President of respondent No.4 and the cousin, being daughter of the maternal uncle, of the Subject Expert. Reply to the writ petition has not been filed by respondent No.4. Respondent No.5 has filed reply and denied her relationship with Shri Bhagat Ram, President of the PTA, but has admitted that she is related to Subject Expert. However, according to her, she is distantly related. The averments in this behalf are vague. Respondent No.5 within 10 days shall file affidavit disclosing her exact relationship with respondent No.4. List on 13th December, 2007."

After this order was passed, the respondent No.5 filed an affidavit in which it is stated that her father is the real brother of the mother of the Subject Expert. It is, therefore, clear that the Sub Expert was the first cousin of respondent No.5.

One of the basic principles of natural justice is that all administrative actions should be fair and just. The maxim *nemo judex in re sua* means that a man should not be a judge in his own

cause. It also means that a judge must be impartial. It is also a settled principle of natural justice that the fairness must not only be done but should also be seen to have been done. It is one of the fundamental principles of our jurisprudence that a person against whom bias is alleged should not take part in the sitting. The question is not whether the said person is actually biased. He may or may not decide impartially. However, if there is a real likelihood in the mind of a person against whom the decision is taken that justice has not been done to him because of bias, then such action has to be struck down. What is objectionable is not that the decision is actually tainted with bias, but that the circumstances are such as to create a reasonable apprehension in the mind of others that there is a likelihood of bias.

The apex Court in **A.K.Kraipak** v. **Union of India**, AIR 1970 SC 150, held that selection made by a Board where one of the Members of the Board was a candidate is vitiated on account of the violation of the principles of natural justice. The apex Court held as follows:-

> "20. The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words, they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules, namely (1) no one shall be a

judge in his own cause (Nemo debet esse judex propria causa), and (2) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or un reasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the pinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is not questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. As observed by this Court in *Suresh Koshy George v. University of Kerala*, Civil Appeal No.990 of 1968, D/- 15-7-1968 = (AIR 1969 SC 198) the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the frame-work of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case."

Shri B.C.Negi learned counsel for respondent No.5 has relied upon the judgment of the apex Court in **Dr. G. Sarana** v. **University of Lucknow and others,** (1976) 3SCC 585 and urges that since the petitioner appeared in the interview, he is estopped from raising the plea of bias. The facts of the said case are entirely different. The allegations of bias raised by the petitioner in that case were such which were known to him much before the interview took place. He did not raise any objection at the time of the interview but only after his non-selection which he has now challenged. The court did not entertain the plea of bias on this ground. In the present case, the petitioner could not have known about the relationship of the Subject Expert with respondent No.5. In fact, it was the duty of the Subject Expert to have told the authorities that he would not be part of the selection committee in view of the fact that one of the candidates is his first cousin.

Shri B.C.Negi learned counsel has also relied upon a decision of the apex Court in **J.Mohapatra and Co and another** v. **State of Orissa and another**, (1984) 4 SCC 103, and urges that the doctrine of necessity must be invoked since no Subject Experts were available in the school and the Subject Expert was called from the neighbouring schools. We fail to appreciate this argument. It is not the case of the respondent that no other

subject experts were available in any other schools close by. Why was only that Subject Expert chosen to conduct the interview? There is no foundation for applying the principles of necessity. This principle will only become applicable when sufficient material is placed before the Court to show that despite all efforts having been made, no other selection committee could be or could have been constituted. In fact the apex Court in **Mohapatra's** case *(supra)* also rejected this plea and held that justice should not only be done but manifestly seen to be done. The apex Court held as follows:-

> "The doctrine of necessity is an exception to the rule that no man should be a judge in his own cause. An adjudicator, who is subject to disqualification on the ground of bias or interest in the matter which he has to decide, may be required to adjudicate if there is no other person who is competent or authorized to adjudicate or if a quorum cannot be formed without him or if no other competent tribunal can be constituted. In such cases the principle of natural justice would have to give way to necessity. The doctrine of necessity applies not only to judicial matters but also to quail-judicial and administrative matters."

These observations cannot be invoked in the present case since there is nothing on the record to show that no other committee could have been constituted. In fact, this question is no longer *res integra*. The apex Court in **Ashok Kumar Yadav**

and others v. **State of Haryana and others,** AIR 1987 SC 454, has held as follows:-

> "There can be no doubt that if a selection committee is constituted for the purpose of selecting candidates on merits and one of the members of the Selection Committee is closely related to a candidate appearing for the selection, it would not be enough for such member merely to withdraw from participation in the interview of the candidate related to him but he must withdraw altogether from the entire selection process and ask the authorities to nominate another person in his place on the selection committee, because otherwise all the selections made would be vitiated on account of reasonable likelihood of bias affecting the process of selection."

The apex Court in **Ashok Kumar Yadav's** case (*supra)* approved the observations of the High Court of Himachal Pradesh in **D.K.Khanna** v. **Union of India and others**, AIR 1973 HP 30, where this court had set aside the selection when one of the members of the Committee constituted for selecting members of the State Civil Service for promotion to the Indian Administrative Service was the son-in-law of a candidate. Despite the fact that the son-in-law had not taken any part in the consideration of his father-in-law's candidature, the High Court observed that the degree of relationship in this case was so close as to reasonably give an impression to the other candidates that

there was a real likelihood of the son-in-law espousing the cause of his father-in-law as his own.

In view of the law laid down above, we are of the considered view that in this case also the petitioner and the other candidates would have a very reasonable apprehension in their mind that the selection would be biased since the selected candidate –respondent No.5 is the first cousin of one of the members of the selection committee. Therefore, without going into the merits of the case, we set aside the selection of respondent No.5. The respondent No.4 is directed to ensure that fresh selection process to the post of Post Graduate Teacher, Biology on PTA basis be completed on or before 28.2.2008. Keeping in view the interest of the students, the petitioner shall be allowed to continue to teach till 28.2.2008.

The writ petition is disposed of in the aforesaid terms. No order as to costs.

(Deepak Gupta),J.

December 26, 2007 (V.K.Ahuja),J.

s.